

(2009) 06 KL CK 0135

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11701 of 2007 (R)

Dr. C. Vijayalakshmi

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Special Rules for the Kerala Dental Education Service, 1975 — Rule 5

Citation : (2009) 3 ILR (Ker) 301 : (2009) 2 KLJ 736

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan, K. Radhamani Amma, Antony Mukkath, K.V. Joy and K. Ramachandran Thykoodam, for the Appellant; V. Tek Chand, G.P., for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—Whether the "Teaching Experience" prescribed for Lecturers with Post Graduation, for granting grade promotion as Readers under the Directorate of Ayurveda Medical Education,, is the "Post qualification experience" or whether "total experience"- also accounting the experience obtained prior to acquisition of the Post Graduate qualification/is the issue involved herein, Since the Government/Department took the stand that it can only be the "Post qualification experience" as held in Rabi v. State of Kerala 2007 (4) KLT 335 and hence that the petitioner is not eligible to have the benefit granted by the 3rd respondent with effect from the date of acquisition of the Post Graduate qualification, the amount already paid has been stated as excess payment and is sought to be recovered, which is under challenge in the present Writ Petition.

2. The petitioner joined service as "Tutor" in the Ayurveda Medical Maternity Hospital, Poojappura on 17.04.1990 and completed the probation satisfactorily on 17.04.1992. She was promoted as "Lecturer" on 11.09.1998 and after obtaining different promotions, she retired from the service on 31.05.2008 while

working as a Professor.

3. Admittedly while working as "Tutor" the petitioner did not have the Post Graduate qualification in M.D., for which she joined only subsequently (on 05.05.1999) and acquired the same on 01.06.2002 As per Ext.P4 G.O, providing revision of pay scales of the teaching staff in the Ayurveda Colleges, the teachers having the Post Graduate qualifications were entitled to have "AICTE Scales" with effect from-01.11.1997, based on Ext.P23 G.O. implementing the pay revision at that point of time, In the case of Non-Post Graduate Teachers, a "modified revised scale" was provided under Clause 8 of Ext. P4, Clause 3(b) of the very same G.O. also provided that, Lecturers with Post Graduation and 5 years of (Physical) teaching experience and those who have 10 years of service as "Tutor" and "Lecturer put together,, will be promoted as "Reader" in the scale of pay of Rs, 14300-19250/-.

4. While continuing as "Lecturer", the petitioner was given Non-cadre promotion in the scale of pay of Rs. 7800-12975/- with effect from 17.04.2000 as borne by Ext. P7 G.O., which was [modified by substituting the scale of Rs. 12000-15325/- in the case of Non-Post Graduate Degree holders of Ayurveda Colleges as provided under Clause 8 of Ext.P4. The mistake in the relevant scale as shown in Ext.P7 was sought to be corrected by-filing Ext.P8. Subsequently, on acquiring the Post Graduate qualification by the petitioner, her pay was revised in the scale of Rs. 14300-19250/- for Reader (CA) with effect from 01.06.2002, in tune with Ext.P4 G.O., dated 23.01.2001. However, granting the said scale of Rs. 14300-19250/- by the 3rd respondent was objected from the part of the 2nd respondent, stating that the petitioner was eligible for getting regulated only in the AICTE scale of Rs. 12000-18300/- for "Lecturer" with effect from 01.06.2002 and that the 3rd respondent had no authority to have it fixed otherwise, which led to a series of communication:"; between the concerned respondents and the petitioner. Finally, the 3rd respondent issued Ext. P10 letter dated 19.10.2005, informing the position to the petitioner; however advising that recovery could be avoided if the petitioner obtained specific orders granting her "Career Advancement Promotion" as "Reader" with effect from 01.06.2002 in the AICTE scale of Rs, 14300-19250/-.

5. In response to the letters sent by the 3rd respondent, Ext.P14 reply was sent by the 2nd respondent, stating that there was no mistake in denying the benefit to the petitioner, even on the basis of Ext P4 providing for "Career Advancement" whereby she had to wait for promotion as "Reader" at least till 01.06.2007, as she acquired the Post Graduate Degree only on 01.06.2002, In other words, it was asserted by the 2nd respondent that the 5 years" teaching experience as "Lecturer" as prescribed under Clause 3(b) of Ext.P4 G.O., could only be the experience obtained after acquisition of the Post Graduate Degree and not otherwise. Pursuant to Ext. P14, consequential orders/pay slips were issued by the 3rd respondent as borne by Ext.P17 and P18, re-fixing the pay of the petitioner in the cadre of "Lecturer, in the scale of Rs. 12000-18300/- with effect

from 01.06.2002 (after disallowing the scale of Rs, 14300-19250/-) and the excess pay and allowance already- drawn from 01,06,2002 to 03.12,2006 was directed to be refunded (the remaining period having not been disputed in view of the regular promotion given to the petitioner to the cadre of Reader as ordered in Ext. P16) which made the petitioner to approach this Court challenging Ext.P14. P17 and P18 and also seeking for other incidental reliefs.

6. The 1st respondent has filed a counter affidavit seeking to sustain the stand as revealed in Ext. P14. The crux of the contentions is that the petitioner, who acquired the Post Graduate qualification only on 01.06.2002 does, not have the teaching experience in the cadre of Lecturer for 5 years, so as to have made her eligible to be promoted as "Reader" on the basis of the "Career Advancement Scheme" provided under Clause 3(b) of Ext. P4. For proper interpretation of said Clause, to ascertain whether the experience stipulated therein was "after or before" the acquisition of Post Graduate qualification, the said Clause is extracted hereunder:

3. Career Advancement;

a) Tutors who have Post graduate degree in a speciality and also have 5 years of (physical) teaching experience will be promoted as Lecturer in the scale of pay of Rs. 12000-18300.

b) Lecturer with Post graduation and 5 years of (physical) teaching experience and those who have 10 years of service as Tutor and Lecturer put together will be promoted as Reader in the Scale of Pay of Rs. 14300-19250.

7. In support of the contention of the respondents/reliance is sought to be placed on the decision rendered by a Division Bench of this Court reported in Rabi v. State of Kerala 2007 (4) KLT 335 and also on Ext. R1 order passed by the Government turning down the representation preferred by some other Teachers seeking for similar benefits, holding that the experience contemplated in the concerned G.O dated 23.01,2001 (Ext. P4) can only be after acquiring the Post Graduate Degree. The applicability of the above decision and reliance placed on Ext. R1 is vehemently disputed from the part of the petitioner,

8. Shri O.V. Radhakrishnan, the learned Senior Counsel appearing on behalf of the petitioner submits that the idea and understanding of the respondents. 1 and 2 in holding that the Clause 3(b) of Ext. P4 contemplates the experience after acquiring Post Graduate qualification, is thoroughly wrong and misconceived, The learned Senior Counsel, with reference to the decision rendered by the Apex Court in Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, and also in A. K. Raghumani Singh and Others Vs. Gopal Chandra Nath and Others, asserts that Clause 3(b) in Ext. P4 envisages only the "total experience" and not the Post qualification experience; particularly when it was rather a case of "grade promotion" with intend to provide advancement of the career of the teaching staff who were continuing in the stagnated post for quite long and to improve the quality of education by persuading the teachers to

acquire the Post Graduate qualification.

9. The learned Government Pleader, on the other hand submits that the observations made by the Apex Court in the above decisions are entered on a different context and that the present case is squarely covered by the decision of the Division Bench of this Court reported in *Rabi v. State of Kerala* 2007 (4) KLT 335, But the senior counsel appearing for the petitioner submits that the decision rendered by the Division Bench in *Rabi v. State of Kerala* 2007 (4) KLT 335 has not become final, in so far as two Review Petitions arising therefrom (R.P. 205/2008 and R.P. 229/2008) are stated as pending.

10. In the case involved in *Rabi v. State of Kerala* 2007 (4) KLT 335, interpretation was with reference to the qualification prescribed under Rule 5(b) of the Special Rules for the Kerala Dental Services, 1975 read with Rule 10 (ab) of Part II of the K.S. & S.S.R. Under Rule 5(b) for promotion of a Tutor to the next higher post of "Assistant Professor", the qualifications prescribed were (1) BDS degree, (2) Post Graduate Degree in the subject and teaching experience in the subject for three years. Obviously, the said rule did not say that the teaching experience prescribed was to be after the acquisition of the Post Graduation as interpreted by the State and hence it was contended by the concerned petitioners that it was inclusive of the experience as a Tutor" before acquiring the Post Graduate qualification, particularly when, for appointment as a Tutor", B.D.S. Degree alone was sufficient; whereas for promotion to the post of "Assistant Professor", acquisition of Post Graduate qualification in the subject was a mandatory requirement,

11. It is true that as per Rule 2 of the General Rules, if there is a conflict between the General Rules and the Special Rules applicable to any particular service, the latter shall prevail over the provision in the General Rules, It was held by the Division Bench that when the Special Rules did not stipulate whether the experience prescribed was to be "before" or "after" acquiring the requisite qualification, Rule 10(ab) of the General Rules stipulating that it has to be after acquiring the qualification will govern the field. Rule 10(ab) of the General Rules is extracted below for convenience of reference.

Rule 10(ab):

"Where the Special Rules or Recruitment rules for a post in any service prescribe the qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or unpaid apprentices, trainees and Casual Labourers in Central or State Government Service or in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post;

Provided that the experience gained as factory workers on daily wages of a permanent nature may be accepted, if the service is continuous and not of a casual nature.

12. After discussing the relevant facts and circumstances, the Division Bench in *Rabi v. State of Kerala* 2007 (4) KLT 335 observed that acquisition of the Post Graduate qualification was a "must" for being promoted as Assistant Professor and hence that the said qualification being the basic qualification, the experience prescribed has to be treated as the "Post qualification experience", in the light of the stipulation under Rule 10(ab) the General Rules. But before applying the dictum to the present case, the question to be considered is whether the acquisition of Post Graduate qualification can be treated as the "basic qualification" for being promoted as "Reader" (from the post of Lecturer) so as to apply Rule 10(ab) of the General Rules and to hold that the teaching experience prescribed under Clause 3(b) of Ext, P4 "Career Advancement Scheme" is the one to be acquired after the acquisition of Post Graduate qualification.

13. The undisputed facts and figures show that the hierarchy of posts involved in the instant case is; "Tutor, Lecturer, Reader" and so on. It is very much discernible even from Ext.P23 G.O, dated 11.03.1998 (whereby the AICTE scale was made applicable to the teaching staff of the Ayurveda/Homoeo Colleges with effect from 01.11.1997) that the revised pay and-allowance will be applicable only to Post Graduate Degree holders; that the Non-Post Graduate Degree holders will continue to draw the "State Scales" of Pay from time to time and further that on acquiring the P.G. Degree, the latter group would become eligible for the revised scales from the date of acquiring the P.G. Degree (Para 4(i)). In other words, the holding of the posts by the concerned teachers having no Post Graduate Degree was also a situation prevailing in Ayurveda/Homoeo Colleges. The position becomes still more clear when it comes to Ext,P4 providing revision of the pay scales as per G.O. dated 21.03,2001. There also, reference to Ext.P23 G.O. dated 11.03.1998 is also made (in paragraph 8), observing that the Non-Post Graduate Degree holders of Ayurveda Colleges were not eligible for the "AICTE Scales" of pay and that such persons were eligible for only "State Scales" of pay. It is also stated therein, that, since the scale of pay allowed to the Non-Post Graduate Degree Teachers was comparatively lesser, the Government was pleased to assign "Modified State Scales of Pay" to such teachers of Ayurveda Colleges who had not acquired the Post Graduate Degree, The post of "Reader" is also shown thereunder, with the modified scale of pay of Rs, 12000-15325/- as payable to such Readers having no Post Graduate Degree. In other words, to hold the post of "Reader" acquisition of Post Graduate Degree was never stipulated as a "basic qualification and there were Readers (other than the Readers enjoying the AICTE Scale) with a comparatively lesser but "modified scale" of pay as revised.

14. As stated already, in the case *Rabi v. State of Kerala* 2007 (4) KLT 335, the question was with regard to the promotion of a Tutor" in the Kerala Dental Education Service to the next higher post of "Assistant Professor". Even though the post of "Tutor" did not require the Post Graduate qualification, the post of Assistant Professor very much required the Post Graduate qualification and as

such,. Post Graduate qualification was the basic qualification for the post of Assistant Professor. The experience mentioned in the Rules was held as to be Post qualification experience, applying the mandate under Rule 10(ab) of the General Rules, (But in the instant case, Post Graduate qualification is not prescribed as a basic qualification for being promoted from the post of "Lecturer" to that of "Reader". This being the position, it cannot be said that Rule 10(ab) of the General Rules will still come into operation. For the very same reason, the decision rendered by the Division Bench in E. Suresh Babu Vs. Food Corporation of India, stands on a different footing and is not at all applicable.

15. It is to be noted that application of the Rule 10(ab) of the General Rules will be relevant, only when the position is not Otherwise dealt with in the Special Rules. The Division Bench, referring to Rule 5(b) of the Special Rules in the Kerala Dental Education Service, observed that the teaching experience mentioned therein did not specifically stipulate whether it was "after", or "before" acquiring the basic qualification of Post Graduation and hence invoked Rule 10(ab) of the General Rules, to hold it as "Post qualification experience".

16. The learned Senior Counsel appearing for the petitioner submits that the qualifications prescribed under the very same set of Rules to the post of "Professor" in the Kerala Dental Education Service, where the teaching experience mentioned is specifically stated as "after acquiring the requisite qualification"; which stipulation is conspicuously absent with regard to the post of "Assistant Professor", By virtue of crystal clear difference with regard to the qualifications prescribed for the post of "Professor" and "Assistant Professor" in the Kerala Dental Education Service, the Rule-making authority was very much conscious and aware that the "post qualification experience" was needed only with regard to the higher post of "Professor", whereas in the case of the lower post of "Assistant Professor" it could only be the total experience and nothing more, submits the learned Senior Counsel. It is further stated that this vital aspect was unfortunately omitted to be noted by the Division Bench while passing the verdict in 2007(4) KLT 335, which hence has been sought to be reviewed by filing a Review Petition and that it is pending.

17. As stated already, there is black and white difference between the factual position as to the basic qualification prescribed for the post of "Assistant Professor" considered in Rabi v. State of Kerala 2007 (4) KLT 335 and the post of "Reader" as involved in the present case. In the former case, Post Graduate qualification was a mandatory requirement, being the basic qualification, for promotion to the post of "Assistant Professor", whereas in the instant case, the post of "Reader" does not require Post Graduation as a basic qualification. The Non-Post Graduate Readers, though not entitled to have the higher-pay scale prescribed by the AICTE, were very much entitled to continue as Readers with the revised pay provided by the State, as evident from Ext.P4 itself.

18. Yet another important aspect to be noted is that, the "AICTE Scale" was prescribed for the Teachers of Ayurveda Colleges with effect from 01.11.07, as

per ExtP23 G.O. dated 11.03.1998. It is made clear in para 4(i) therein, that such revised pay and allowances will be applicable only, to Post Graduate Degree holders and that the others who did not have the Post Graduate Degree had to continue in the "State Scale"; further stating that the revised AICTE Scale would be made available to the latter group from the date of acquiring the P.G. Degree. The eligibility to the "AICTE Scale" from the date of acquisition of the Post Graduate Degree to the concerned Readers as provided in Ext.P23 is not disputed or attempted to be distinguished from the part of the respondents by filing any-additional counter affidavit. On the other hand, the said G.O. has been specifically referred to in Ext. P4 G.O. providing the revision of the relevant pay scales. This being the position, the scope of Clause 3(b) providing for the "Revised AICTE Scale" of Rs, 14300-19250/- to the Lecturers by promoting them as Readers as part of the "Career Advancement Scheme" has to be considered in the above background and as such, the teaching experience stipulated therein cannot be held as the experience obtained after acquisition of the Post Graduate Degree, and it can only mean the "total experience"; which in turn will make the eligible persons to obtain the "Revised AICTE Scale" from the date of acquisition of the Post Graduate qualification. This is more so, in view of the dictum laid down by the Apex Court in Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, and also A. K. Raghmani Singh and Others Vs. Gopal Chandra Nath and Others, . For the very same reason, no reliance can be placed on Ext.R1 order passed by the 1st respondent and it is for the concerned parties to challenge the same,- if they are aggrieved in any manner.

19. In the above facts and circumstances, there is absolutely no rhyme or reason to sustain Ext. P14 order passed by 2nd respondent or Ext.P17 and PI8 consequential proceedings ordered by the 3rd respondent and hence they are set aside. It is hereby declared that the petitioner is very much entitled to have her pay revised and regulated in the pay scale of Rs. 14300-19250/- with effect from 1.6.2002, the date on which she acquired the Post Graduate qualification and satisfied the requirement in terms of Clause 3(b) of Ext.P4 G.O. and for all consequential benefits.

The Writ Petition is allowed as above. No costs.